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Order 95-11-18



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

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Issued by the Department of Transportation
on the 13th day of **November**, 1995

Joint Application of

AMERICAN **AIRLINES**, INC. and **EXECUTIVE**
AIRLINES, INC., FLAGSHIP AIRLINES, INC.,
SIMMONS **AIRLINES**, INC., and **WINGS WEST**
AIRLINES, INC. d/b/a **AMERICAN EAGLE**

and

CANADIAN AIRLINES INTERNATIONAL LTD.
and **ONTARIO EXPRESS LTD.** and **TIME AIR**
INC. d/b/a **CANADIAN REGIONAL** and **INTER-**
CANADIAN (1991) INC.

for approval of and Antitrust Immunity for Alliance
Agreements pursuant to 49 U.S.C. §§ 41308 and 41309

Docket OST-95-792 - 3

ORDER

SUMMARY

American Airlines, Inc. and its regional affiliates, on the one hand, and Canadian Airlines International, Ltd. and its regional affiliates, on the other hand, filed a joint application for approval of and antitrust immunity for a commercial alliance agreement. We are directing that certain material considered privileged by the applicants be more precisely defined to facilitate expeditious consideration of their application. We are deferring the comment deadline as to the motion for confidential treatment, until seven business days after submission of the above requested clarification in the docket. Finally, we are deferring the otherwise applicable 21-day comment deadline as to the application until further notice. When we have determined that the record of this case is complete, we will establish an appropriate procedural schedule.

APPLICATION

On November 3, 1995, American Airlines, Inc. ("American") and its regional affiliates Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West

Airlines, Inc. d/b/a America Eagle and Canadian Airlines International, Ltd. (“CAI”) and its regional affiliates Ontario Express Ltd., Time Air Inc. d/b/a Canadian Regional and **Inter-Canadian** (1991) Inc. filed a joint application for approval of and antitrust immunity for a commercial alliance agreement (“the Agreement”), between American and its regional affiliates, on the one hand, and **CAI** and its regional affiliates, on the other hand. The application was filed pursuant to 49 U.S.C. 41308 and 41309.

The joint applicants state that the Agreement will create a legal framework that, subject to negotiation and execution, will allow them to cooperate to the extent necessary to **create** a “**seamless** air transport system,” while retaining their separate corporate and national identities. The applicants ask that we grant the requested approval and immunity for a **five**-year term, consistent with the duration of approvals previously granted by the Department to Northwest Airlines, Inc. and KLM Royal Dutch Airlines. Orders 92-11-27 and 93-11-1.

REQUEST FOR CONFIDENTIAL TREATMENT

In conjunction with its application, the applicants filed a joint motion under 14 C.F.R. 302.39 of our regulations requesting confidential treatment for certain documents and information (see November 3 application at pp 52, 53, and 55). The applicants also ask that the Department restrict access to these data to counsel and outside experts for interested parties. The applicants state that such limited access is required due to the “extremely competitively sensitive nature of such documents.” Additionally, the applicants withheld certain information that they consider privileged, and irrelevant to the proceeding.

PRELIMINARY DETERMINATION ON CERTAIN CONFIDENTIALITY ISSUES

The ~~applicants have withheld~~ various material that they consider privileged. They state that they **will** make these documents and information available to Department of Transportation (“the Department”) staff, on an **in camera** basis, to determine their relevance to the proceeding.

As an initial matter, we have previously determined that applicants requesting advisory review by the Department of their documents and information should precisely describe the relevant materials. Order 95-11-5 at 7, n.5. Based on our preliminary review, we find that the applicants have not satisfied the established standard in this matter.¹

We therefore direct the applicants to describe fully the material withheld, consistent with our standard. To this end, the applicants shall:

1. Fully identify each redacted document;

¹ We **understand** that the applicants filed their application contemporaneously with the Department’s issuance of Order 95-11-5. As a result, the applicants did not have the benefit of our most recent guidance in this matter.

2. Supply a complete description of the nature of each redacted document;
3. Supply a written statement indicating the basis of their view as to the lack of relevance and the privilege claimed for each redacted document; and
4. For each redacted document, fully explain why our confidential procedures are insufficient to protect the applicants' competitive and commercial interests.

We fully expect that the supplemental information provided by the joint applicants will be in sufficient detail, both in substance and organization, to allow timely evaluation by the Department and all interested parties, particularly as to its relevance to this proceeding.

ACCORDINGLY:

1. We direct American Airlines, Inc. and its regional affiliates, and Canadian Airlines International, Ltd. and its regional affiliates to provide the detailed descriptions set forth in this order, as a supplement to their joint application;
2. Upon submission by the joint applicants of the required descriptions in this docket, interested parties will be provided seven business days to file comments on the applicants' motion for confidentiality;
3. We defer the 21-day deadline for the filing of comments set forth in 14 CFR Part 303 until further notice;
4. Upon our determination that the joint application is complete, we will establish a procedural schedule for comments and such other responsive pleadings as may be determined necessary to decide this matter fairly and expeditiously; and
5. We shall serve this order on all interested parties.

By:

MARK L. GERCHICK
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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